

Manorma Devi and ors. Vs. State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/520909

Court : Jharkhand

Decided On : Jun-25-2004

Reported in : [2004(4)JCR642(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 147, 148, 149, 323, 341, 342, 354, 380, 384 and 452

Appeal No. : Cri. Misc. No. 2044 of 1999 (R)

Appellant : Manorma Devi and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : A.S. Dayal, Adv.

Advocate for Pet/Ap. : A.K. Sahani, Adv.

Disposition : Application allowed

Judgement :

Hari Shankar Prasad, J.

1. This application Under Section 482 Cr.PC is directed against the order dated 7.12.1998 passed in Complaint Case No. 1092/98, whereby and whereunder the

learned SDJM, Giridih has taken cognizance Under Sections 147, 148, 149, 120B, 452, 323; 341, 342, 354, 380 and 384 IPC,

2. Prosecution case in brief is that opposite party-No. 2 (hereinafter referred to as the 'complainant') filed a complaint, petition, which was registered as Complaint Case No. 1092/98, stating inter alia therein that she runs a grocery shop and on 8.8.1995 at about 12 p.m. petitioners, who are accused in Complaint Case No. 1092/98, came, surrounded the shop and assaulted her and tried to take signatures of the complainant and her husband on a non-judicial stamp paper, for which a proceeding Under Section 107 Cr.PC was initiated and thereafter the complainant reported the matter to the different authorities alleging loss due to damages of the property. After S.A., as many as four witnesses were examined in an enquiry Under Section 202 Cr.PC and cognizance was taken.

3. Mr. A.K. Sahani, learned counsel appearing for the petitioners, submitted that no case is actually made out against the petitioners from perusal of the complaint petition. It is also pointed out that there are allegations of omnibus nature and there is nothing in the complaint petition to show that any case is made out against the petitioners. Further, even if the story of the complaint petition is accepted to be true the same does not make out any case against the petitioners and the petitioners are lady members and are innocent persons and have committed no offence at all. It is further pointed out that a proceeding Under Section 107 Cr.PC for the occurrence dated 8.8.1995 is continuing but even then the complainant, in order to wreak vengeance, lodged a complaint petition to harass 'the accused persons, although prior to his complaint case, husband of the complainant of this case had lodged a Complaint Case No. 495 of 1995 on the same facts and material, date of occurrence, etc, and after settlement, husband of the complainant filed a petition for dropping the case and the case was dropped and therefore, this complaint case. filed by the complaint case, filed by the complainant by adding ten more persons as accused is certainly with some malajlde intention and actuated with malice. It was also submitted that continuance of this case will amount to an abuse of the process of the Court.

4. On the other hand, Mr. A.S. Dayal, learned counsel for the opposite party-complainant, submitted that the Complaint Case No. 495/95 has not been disposed of on merit after trial and, therefore, on the same facts and materials another case can be lodged and there is no bar to lodging of the case on the same facts and materials. The learned counsel further pointed out that in an enquiry Under Section 202 Cr. PC witness Nos. 1 and 2 have levelled direct allegations against the petitioners of holding the hair of the complainant and dragging her out. So there is specific allegation against these petitioners and after a proper enquiry in-the matter cognizance in the case has been taken.

5. On perusal of lower Court records, called for in the case, and other materials on record, it is clear that husband of the complainant had earlier filed a Complaint Case No. 495/95 and he also filed a petition for dropping the complaint case on 29.8.1995 and case was dropped and subsequently wife of the complainant of Complainant Case No. 495/95 has filed this application on the same facts and for same date of occurrence etc. but has added 10 more petitioner in the case. The first complaint was filed on 22.8.1995 bearing Complaint Case No. 495/95 and the case was dropped on 29.8.1995 and this complaint case has been filed on 17.10.1998 and from perusal of complaint petition in fact no case of their involvement and participation in the occurrence is actually made out but at the enquiry stage A/Ws 1 and have made specific allegation against the petitioners and, therefore, it can be said that since first case being Complaint Case No. 495/95 was dropped on the petition of husband of the Complaint Case No. 1092/98 on the ground that matter has been settled with the accused persons of Complaint Case No. 495/95, so far as these petitioners are concerned, appears to be actuated with malice.

6. In that view of the matter, this application is allowed and the impugned order dated 7.12.1998 passed in Complaint Case No. 1092/98, so far as these petitioners are concerned, is quashed